

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN S. BARTH,

Plaintiff,

v.

PLAYSTER CORPORATION, et al.,

Defendants.

Case No. CV 17-0274 FMO (JCx)

ORDER OF DISMISSAL

Plaintiff filed his complaint on January 12, 2017. By order dated April 4, 2017, plaintiff was ordered to show cause, on or before April 12, 2017, why this action should not be dismissed for plaintiff's failure to complete service of the summons and complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure. (See Dkt. 24, Court's Order of April 4, 2017). Plaintiff was admonished that "[f]ailure to file a timely response to th[e] Order to Show Cause may result in the action being dismissed for lack of prosecution and for failure to comply with the orders of the court, pursuant to Local Rule 41." (Id.). As of the date of this Order plaintiff has not responded to the Order to Show Cause nor filed proofs of service of summons and complaint on any defendant.

Rule 4(m) of the Federal Rules of Civil Procedure provides that a court, on its own initiative, "must dismiss the action without prejudice" if service is not effected "within 90 days after the complaint is filed[.]" In addition, a district court may dismiss an action for failure to prosecute or

1 to comply with court orders. Fed. R. Civ. P. 41(b); Link v. Wabash Railroad Co., 370 U.S. 626,
 2 629-30, 82 S.Ct. 1386 (1962) (authority to dismiss for failure to prosecute necessary to avoid
 3 undue delay in disposing of cases and congestion in court calendars); Ferdik v. Bonzelet, 963 F.2d
 4 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915, 113 S.Ct. 321 (1992) (district court may dismiss
 5 action for failure to comply with any court order). Dismissal, however, is a severe penalty and
 6 should be imposed only after consideration of the relevant factors in favor of and against this
 7 extreme remedy. Thompson v. Housing Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir.),
 8 cert. denied, 479 U.S. 829, 107 S.Ct. 112 (1986). These factors include: (1) the public's interest
 9 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
 10 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
 11 (5) the availability of less drastic sanctions. Id.; Henderson v. Duncan, 779 F.2d 1421, 1423 (9th
 12 Cir. 1986).

13 Pursuant to Rules 4(m) and 41(b) and the Court's inherent power to achieve the orderly and
 14 expeditious disposition of cases, Link, 370 U.S. at 629-30, 82 S.Ct. at 1388, and in light of the
 15 factors outlined in Henderson, supra, dismissal of this action without prejudice for failure to effect
 16 service within the specified time and comply with the Court's Order to Show Cause issued on April
 17 4, 2017, is appropriate.

18 Based on the foregoing, IT IS ORDERED that judgment be entered dismissing this action,
 19 without prejudice, for failure to effect service and comply with the orders of this Court.

20 Dated this 27th day of April, 2017.

21 /s/
 22 Fernando M. Olguin
 23 United States District Judge
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